

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Joseph Carvajal, )  
Petitioner, ) C/A No. 1:15-1047-MBS  
vs. )  
Warden of FCI - Salter, )  
Respondent. )  
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)

**ORDER AND OPINION**

Petitioner Joseph Carvajal, proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 on March 4, 2015. Petitioner contends that he is “actually innocent” of being a career offender and that he should be resentenced. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling.

On May 20, 2015, the Magistrate Judge issued a Report and Recommendation in which she noted that Petitioner’s challenge more properly is brought pursuant to 28 U.S.C. § 2255. The Magistrate Judge further noted that Petitioner failed to satisfy the criteria set forth by the Court of Appeals for the Fourth Circuit to determine whether a § 2255 motion would be inadequate or ineffective to test the legality of a prisoner’s detention. See In re Jones, 226 F.3d 328, 333-34 (4<sup>th</sup> Cir. 2000). Accordingly, the Magistrate Judge recommended that the § 2241 petition be dismissed without prejudice and without requiring Respondent to file a return. Petitioner filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs in the recommendation of the Magistrate Judge and incorporates the Report and Recommendation herein by reference. The within § 2241 petition is dismissed without prejudice and without requiring Respondent to file a return.<sup>1</sup>

#### CERTIFICATE OF APPEALABILITY

A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Rose v. Lee, 252 F.3d 676, 683-84

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<sup>1</sup> The § 2241 petition also is moot as it appears from the Federal Bureau of Prisons website that Petitioner was released from custody on April 20, 2016. See Stewart v. United States, Nos. 5:08-CR-00018-FL02, 5:12-CV-00126-FL, 2012 WL 7177064 (E.D.N.C. Oct. 18, 2012) (noting that a § 2255 motion attacking a sentence is moot where the prisoner has been released).

(4th Cir.2001). The court concludes that Petitioner has not made the requisite showing.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
Senior United States District Judge

Columbia, South Carolina

August 30, 2016.

**NOTICE OF RIGHT TO APPEAL**

**Petitioner is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**